

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PATRICK HARE,	§
	§
Defendant Below-	§ No. 50, 2006
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0502014185
Plaintiff Below-	§
Appellee.	§

Submitted: July 11, 2006

Decided: September 18, 2006

Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

**ORDER**

This 18<sup>th</sup> day of September 2006, upon consideration of the appellant's Supreme Court Rule 26(c) brief, his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) A Superior Court jury found the defendant-appellant, Patrick Hare, guilty of one count of first degree burglary. The Superior Court sentenced Hare to eight years at Level V incarceration to be suspended after serving three years for two years at Level III probation. This is Hare's direct appeal.

(2) Hare's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Hare's counsel asserts that, based upon a

complete and careful examination of the record, there are no arguably appealable issues. By letter, Hare's attorney informed him of the provisions of Rule 26(c) and provided Hare with a copy of the motion to withdraw and the accompanying brief. Hare also was informed of his right to supplement his attorney's presentation. Hare has raised five issues for this Court's consideration. The State has responded to the position taken by Hare's counsel, as well as the arguments Hare has raised, and has moved to affirm the Superior Court's judgment.

(3) The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold: (a) this Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (b) this Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.<sup>1</sup>

(4) Hare raises four issues that are reviewable in this appeal. All of the issues relate to the victim's ability to speak and understand English, and the Superior Court's decision to allow the victim to testify with the help of an interpreter. Although not clearly articulated, Hare appears to argue that

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<sup>1</sup> *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

the victim spoke and understood English well enough to testify and that the State's use of an uncertified interpreter unfairly influenced the case. Hare's first argument is that the Superior Court erred in using an uncertified translator at trial. Second, Hall appears to contend that the tape recording of the victim's 9-1-1 call should have been admitted into evidence because it reflected on the victim's credibility regarding the need for an interpreter. Third, Hare contends that the Superior Court erred by not sequestering the interpreter along with the other witnesses. Fourth, Hare argues that because the victim was not provided with a translator when he originally was interviewed by police, his out-of-court statements should not have been admitted at trial. Hare also raises a final claim alleging ineffective assistance of counsel. With respect to this issue, it is well-settled that claims of ineffective assistance of counsel cannot be raised for the first time on direct appeal.<sup>2</sup> Accordingly, we will limit our review to the first four claims raised by Hare.

(5) Hare's first claim is that the Superior Court erred by allowing translation services for the victim to be performed by an uncertified translator. Because this claim was not raised at trial, we review it for plain

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<sup>2</sup> *Duross v. State*, 494 A.2d 1265, 1269 (Del. 1985).

error.<sup>3</sup> To constitute plain error, Hare must establish that the alleged error affected his substantial rights.<sup>4</sup> We find no plain error in this case. Before accepting the interpreter's services, the Superior Court established on the record that the interpreter was proficient in Punjabi, that he had acted as an interpreter in other state courts, including other Delaware courts, that he was familiar with Delaware's code for interpreters and that he would comply with it.<sup>5</sup> Moreover, Hare does not allege any specific instance of inaccurate or incomplete translation in this case. Accordingly, we find no plain error in the Superior Court's decision to use an uncertified translator.

(6) Hare next asserts a vague claim of error because the tape recording of the victim's 9-1-1 call was not admitted into evidence. Hare contends that the tape recording would have resolved the issue he alleges regarding the victim's proficiency in English. Hare also claims the tape would have provided a basis to challenge the victim's description of the perpetrator. Hare does not allege that the State failed to provide defense counsel with the tape recording, only that the State failed to admit the tape recording during its case-in-chief. Although Superior Court Criminal Rule

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<sup>3</sup> Del. Supr. Ct. R. 8.

<sup>4</sup> *Wainwright v. State*, 504 A.2d 1096, 1100 (Del.), *cert. denied*, 479 U.S. 869 (1986).

<sup>5</sup> *See Diaz v. State*, 743 A.2d 1166, 1183 (Del. 1999).

16 imposes certain obligations upon the State to disclose evidence to defense counsel, there is no requirement that the State introduce particular evidence during its case-in-chief.<sup>6</sup> Accordingly, we find no merit to Hare's second claim.

(7) Hare's third claim is that the Superior Court erred by not sequestering the interpreter along with the other witnesses. Hare alleges that by being allowed to remain in the courtroom and become familiar with the case, the interpreter was able to help the prosecution by coaching the victim through his testimony. Hare did not raise an objection at trial. Accordingly, we review this claim for plain error.<sup>7</sup> In order to succeed on his claim, Hare must establish that the interpreter and victim violated the sequestration order and that it had a prejudicial effect on the trial.<sup>8</sup> Hare, however, does not make any specific allegation of a violation of the sequestration order or of improper coaching by the translator. Accordingly, we find no plain error in the Superior Court's decision to allow the interpreter to remain in the courtroom.

(8) Hare's final contention is that the victim's statement to police should not have admitted at trial because the victim was not properly

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<sup>6</sup> See generally Del. Super. Ct. Crim. R. 16 (2006).

<sup>7</sup> Del. Supr. Ct. R. 8.

<sup>8</sup> *Fountain v. State*, 382 A.2d 230, 231 (Del. 1977).

assisted by a translator in making the statement. The investigating officer testified, however, that the victim was able to provide a statement to the police in English. The officer testified that it “wasn’t extremely difficult” to understand the victim’s English. Given that the victim was able to communicate with the police in English, there was no requirement for the police to secure a translator before questioning him. Accordingly, we find no merit to Hare’s contention that the Superior Court erred by admitting the victim’s statement into evidence.

(9) This Court has reviewed the record carefully and has concluded that Hare’s appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Hare’s counsel has made a conscientious effort to examine the record and the law and has properly determined that Hare could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State’s motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice